

REMARKS

These remarks and the Amended Appeal Brief filed herewith are fully responsive to a Notification of Non-Compliant Appeal Brief (“the Notification” herein) mailed on 19 March 2007. The remarks also summarize a telephone conversation that was held on 25 April 2007 regarding the Notification.

Summary of Telephone Conversation

A telephone conversation regarding the Notification was held on 25 April 2007 between Examiner Audrey Chang and John Lindemann, agent of record in the instant application.

Examiner Chang initially offered a lengthy explanation of how she was required to write the Notification by one or more of the Appeals Judges and that she did not necessarily agree with their position.

Referring to the Appeal Brief as filed, Mr. Lindemann asked, in regard to the marking of box number 5 on the Notification, why the statements of “Grounds for rejection to be reviewed on appeal” appearing at page 11 of the Appeal Brief as filed, were insufficient. Examiner Chang replied that the reason that box number 5 was checked was not that the grounds to be actually reviewed on appeal were incompletely listed, but that Appellants did not include, in section 6 of the Appeal Brief, any reference to outstanding double patenting rejections in the application. Mr. Lindemann pointed out that (1) section 3 of the Appeal Brief as filed noted that such rejections were not being appealed, but that Appellants reserved the right to address these rejections at such time as the Office indicated otherwise allowable subject matter, and (2) that 37 CFR 41.37(c)(1)(vi) does not include a requirement that matters not being reviewed on appeal be listed. Examiner Chang replied that the requirement was made by the Appeal Judges and that a reference, in section 6 of an Amended Appeal Brief, to the double patenting rejection not being appealed would satisfy the requirement.

Again referring to the Appeal Brief as filed, Mr. Lindemann asked about the marking of box number 10 on the Notification, including the explanation “The sections under Claims Appendix, Evidence Appendix, and Related Proceedings [sic] should be placed at separated pages.” Mr. Lindemann pointed out that in the Appeal Brief as filed, these sections begin at pages 44, 51 and 50 respectively. Upon reviewing the noted pages on PAIR, Examiner Chang

agreed that these sections properly began on separate pages and that the checking of box number 10 was therefore improper.

Response to Notification of Non-Compliant Appeal Brief

1. Regarding box number 5 on the Notification, and the allegation “The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi))” Appellants refer to the Summary of Telephone Conversation and again point out that 37 CFR 41.37(c)(1)(vi) does not include a requirement that matters not being reviewed on appeal be listed. However, in order to advance the appeal process, we submit an Amended Appeal Brief herewith that notes in each of sections 3, 6 and 7 that Appellants are not requesting review of the double patenting rejections on appeal.

2. Regarding box number 10 on the Notification, and the requirement “The sections under Claims Appendix, Evidence Appendix, and Related Proceedings [sic] should be placed at separated pages” we again refer to the above Summary of Telephone Conversation and point out that Examiner Chang has agreed that this requirement was improperly included in the Notification. In order to avoid any confusion on this point, and as suggested in MPEP §1205.02, a Table of Contents has been added to the Amended Appeal Brief that clearly indicates the page numbers at which the Claims Appendix, Evidence Appendix, and Related Proceedings sections begin.

Additional Amendments to Appeal Brief

Although not specifically required by the Appeals Judge, the Amended Appeal Brief also includes the following clarifying changes, in compliance with 37 CFR 41.37 and the MPEP:

A. The Related Proceedings Index is updated to include the word “none” as suggested in the MPEP:

“...If there are no such copies of decisions being submitted in the appeal, then a related proceedings appendix should be included with the indication ‘none.’”
MPEP §1205.02 (x)

B. Arguments (B) and (C) are updated to affirmatively indicate that the argued claims do not stand or fall together.

Conclusion

Appellants have submitted an Amended Appeal Brief and remarks that address all issues raised in the 19 March 2007 Notification of Non-Compliant Appeal Brief. We respectfully request consideration of the Appeal Brief as amended.

The due date for submission of the Amended Appeal Brief with a Petition for one-month's extension of time fell upon a Saturday (May 19, 2007). Per 37 C.F.R. §1.7, the Amended Appeal Brief, Petition and this Response are timely filed today, Monday, May 21, 2007.

Other than the aforementioned extension fee, no fees are believed due. However, if any additional fee is required in connection with this Response to Notification of Non-Compliant Appeal Brief or the accompanying Amended Appeal Brief, please charge deposit account no. 12-0600. Should any issues remain outstanding, the Examiner is encouraged to telephone the undersigned.

Respectfully submitted,
LATHROP & GAGE L.C.

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